

# **Exhibit 3**

---

**From:** Bamberger, Nowell D. <nbamberger@cgsh.com>  
**Sent:** Friday, April 23, 2021 3:23 PM  
**To:** Ron Krock; Kay, Joseph; Jordan, Christine; Gotter-Nugent, Abigail K.; Colavecchio, JD  
**Cc:** David Elsberg; Lena Konanova; Ester Murdukhayeva; Molton, David J.; Krzyzowski, Marek P.  
**Subject:** RE: Fairfield // Motion for Leave to Amend

Thanks, Ron.

Given Judge Morris's statements on the record that she was ordering a schedule during the conference, we are not inclined to try to settle a separate order implementing what was discussed. We don't think Judge Morris was inviting that. That said, we agree it makes sense for the parties to be on the same page about what the plan is going forward. Yes -- we understood that the issues she envisions for the briefing on the motion to amend are procedural objections under Rule 15 and/or 16, and not whether the complaint states a claim or other futility issues (we understood her to be saying that such issues will be taken up on the motion to dismiss, once there is an operative complaint).

Best,  
Nowell

---

**Nowell D. Bamberger**  
Cleary Gottlieb Steen & Hamilton LLP  
Assistant: vjohnson@cgsh.com  
2112 Pennsylvania Avenue, NW  
Washington, DC 20037  
T: +1 202 974 1752  
nbamberger@cgsh.com | clearygottlieb.com

---

**From:** Ron Krock <rkrock@selendygay.com>  
**Sent:** Friday, April 23, 2021 11:08 AM  
**To:** Bamberger, Nowell D. <nbamberger@cgsh.com>; Kay, Joseph <jkay@cgsh.com>; Jordan, Christine <cjordan@cgsh.com>; Gotter-Nugent, Abigail K. <agotter@cgsh.com>; Colavecchio, JD <jdcolavecchio@cgsh.com>  
**Cc:** David Elsberg <delsberg@selendygay.com>; Lena Konanova <lkonanova@selendygay.com>; Ester Murdukhayeva <emurdukhayeva@selendygay.com>; Molton, David J. <DMolton@brownrudnick.com>; Krzyzowski, Marek P. <MKrzyzowski@brownrudnick.com>  
**Subject:** Fairfield // Motion for Leave to Amend

Nowell and team,

We're preparing a draft proposed order memorializing the briefing schedule set by Judge Morris at the Wednesday conference.

In the meantime, we wanted to confirm with you the scope of the parties' briefing on the upcoming motion for leave to amend. Our understanding is that the parties will brief only these issues:

- Whether Rule 15(a)(2) or Rule 16(b) applies to the proposed amendments;
- Whether, if Rule 16(b) applies, there is "good cause" for the proposed amendments; and

- Whether, if Rule 15(a)(2) applies, the proposed amendments are in “bad faith” or would cause “undue delay” or “undue prejudice.”

However, the parties would not argue futility on the upcoming motion for leave to amend as that would overlap with merits inquiries on a motion to dismiss, like whether “a claim [was] pled on the face of the complaint,” Tr. 39:21, which the Court agreed the parties should not brief “until [she] ha[s] a complaint,” *id.* 40:20-23.

Let us know if you agree and we will endeavor to send a draft order for your consideration as soon as practicable.

Best,  
Ron

**Ronald J. Krock**

Associate

---

**Selendy & Gay PLLC**

1290 Avenue of the Americas, New York, NY 10104

**T** 212 390 9019 **M** 862 324 6789

---

[rkrock@selendygay.com](mailto:rkrock@selendygay.com) [www.selendygay.com](http://www.selendygay.com)

This message is being sent from a law firm and may contain confidential or privileged information. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.

Throughout this communication, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities. Our external privacy statement is available at:  
<https://www.clearygottlieb.com/footer/privacy-statement>